

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 IO-13 ACDA-07 INRE-00 SSO-00  
NSCE-00 USIE-00 CIAE-00 DODE-00 PM-04 H-01 INR-07  
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15  
TRSE-00 /072 W

-----089310 071818Z /42

O 071625Z JUL 77

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 9640

INFO AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION USBERLIN IMMEDIATE

USMISSION NATO

AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 1 OF 3 BONN 11288

USEEC

DEPARTMENT FOR EUR/CE

E.O. 11652: GDS

TAGS: PGOV, GE, WB, US, UK, FR, UR, EC, GW,

SUBJECT: BERLIN AND DIRECT ELECTIONS TO EUROPEAN  
PARLIAMENT

REFS: A. USBER 1757, B. STATE 56984, C. 76 BONN 3348,  
D. 76 BONN 3573, E. 76 BONN 11230, F. USBER 1783,

BEGIN SUMMARY: BONN GROUP HAS CONSIDERED AND  
GENERALLY APPROVES THE BK/O PROPOSED BY THE MISSIONS  
IN BERLIN (REF A), FOR ADOPTION OF THE DECISION AND ACT ON  
DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT. FULL  
BONN GROUP HAS AGREED AD REF TO MINOR CHANGE REGARDING  
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THE BK/O'S REFERENCE TO ALLIEED RIGHTS AND RESPONSIBILI-  
TIES AND FRG IS URGING USE OF "ELECT" IN PLACE  
OF "SELECT" TO REFER TO MANNER IN WHICH REPRESENTATIVES  
ARE CHOSEN. FOR RASONS CITED BELOW, WE RECOMMEND  
PUSHING FOR "SELECT" WITH AUTHORIZATION TO AGREE TO  
"ELECT" IF FRENCH AND BRITISH SO DESIRE. FRG WISHES  
TO HAVE BK/O ISSUED AND TAKEN OVER BY BERLIN SENAT

VIA MANTELGESETZ PROCEDURE PRIOR TO JULY 20 SUMMER  
BREAK SO THAT FRG CAN DEPOSIT INSTRUMENTS OF RATIFICA-  
TION IN BRUSSELS. ACTION REQUESTED: APPROVAL OF DRAFT  
BK/O AS AMENDED BY BONN GROUP, WITH AUTHORITY TO  
AGREE TO USE OF "ELECT " INSTEAD OF "SELECT" AS FALLBACK  
POSITION. END SUMMARY

1. AT TRIPARTITE BONN GROUP MEETING ON JULY 5, ALLIED  
BONN GROUP REPRESENTATIVES AGREED AD REFERENDUM THAT  
THE TEXT OF THE BK/O AS PROPOSED BY THE MISSIONS IS  
SATISFACTORY AND ALSO AGREED THAT IT WOULD BE PREMATURE  
TO ISSUE A BK/L AT THIS TIME. UK LEGAL ADVISOR (CHAMBERLAIN)  
RAISED POSSIBILITY OF A BK/L, NOTING THAT IF PARLIA-  
MENT'S POWERS INCREASE BY EVOLUTION, IT MAY BE DIFFI-  
CULT TO FIND A POINT IN TIME AT WHICH IT WOULD BE  
PROPER TO CIRCUMSCRIBE THEM. HOWEVER, HE DID NOT  
PURSUE THE MATTER. COMMENT: WE NOTE THAT THE BONN  
GROUP DECISION NOT TO APPROVE THE BRITISH MISSION'S  
DRAFT BK/L (REF A) IS CONSISTENT WITH DEPARTMENT'S  
"STRONG" VIEW EXPRESSED LAST YEAR THAT ANY RESTRIC-  
TION OF VOTING RIGHTS OF THE BERLIN REPRESENTATIVES  
WOULD BE INAPPPROPRIATE (REF B).

2. FULL BONN GROUP DISCUSSED PROPOSED BK/O AT JULY 5  
MEETING. FRG LEGAL ADVISER (DUISBERG) POINTED OUT  
THAT THE INCLUSION OF REFERENCE TO ALLIED RIGHTS AND  
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RESPONSIBILITIES IN FIRST PARAGRAPH MADE IT AMBIGUOUS,  
SINCE IT COULD SUGGEST THAT THIS REFERENCE LIMITED, IN  
SOME UNSPECIFIED WAY, THE APPLICATION TO BERLIN OF THE  
DECISION AND ACT OF THE COUNCIL OF THE EUROPEAN COM-  
MUNITIES. HE ALSO ASKED WHY THERE WAS A NEED FOR  
THE REFERENCE TO ALLIED RIGHTS AND RESPONSIBILITIES  
AND SAID THE FRG WOULD PREFER TO HAVE IT DROPPED. UK  
LEGAL ADVISOR (CHAMBERLAIN) AND THE US REP NOTED THAT  
THERE ARE TWO REASONS FOR ITS INCLUSION: FIRST, A  
PRESENTATIONAL POINT TO COUNTER SOVIET OBJECTIONS,  
AND SECOND, A RESERVATION OF THE ALLIED POSITION IN  
THE EVENT THAT THE ASSEMBLY SHOULD SUBSTANTIALLY  
CHANGE ITS NATURE (E.G. BY AN INCREASE IN POWERS) IN  
THE FUTURE.

3. FRG REP (HENZE) SAID THAT THE FRG DOES NOT  
QUESTION THE FACT THAT FUTURE DEVELOPMENTS IN THE  
ASSEMBLY ARE SUBJECT TO ALLIED RIGHTS AND RESPONSIBILI-  
TIES. DUISBERG SAID THAT THE SPECIFIC LIMITATION ON  
THE METHOD OF SELECTING REPRESENTATIVES IS ALREADY  
CONTAINED IN THE FIRST PARAGRAPH AND THAT THE FRG  
WOULD PREFER NOT TO HAVE THE POINT MADE EXCESSIVELY AND

REPEATEDLY, WHICH RESULTS FROM THE REFERENCE TO ALLIED RIGHTS AND RESPONSIBILITIES AT THE BEGINNING OF THE BK/O, THAT BERLIN IS A SPECIAL CASE. HE SUGGESTED THAT THE REFERENCE TO ALLIED RIGHTS AND RESPONSIBILITIES COULD PERHAPS BE INCLUDED IN THE SECOND PARAGRAPH, A SUGGESTION TO WHICH THE OTHERS AGREED. CHAMBERLAIN SUGGESTED REDRAFTING THE BK/O AS FOLLOWS:

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TRSE-00 /072 W

-----089366 071818Z /42

O 071625Z JUL 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC IMMEDIATE 9641  
INFO AMEMBASSY BERLIN  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS  
USMISSION USBERLIN IMMEDIATE  
USMISSION NATO  
AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 2 OF 3 BONN 11288

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BEGIN TEXT:

(1) THE ALLIED KOMMANDATURA APPROVES THE EXTENSION TO BERLIN OF THE DECISION AND ACT OF THE COUNCIL OF THE EUROPEAN COMMUNITIES CONCERNING THE ELECTION OF THE REPRESENTATIVES OF THE ASSEMBLY BY DIRECT UNIVERSAL SUFFRAGE ON THE UNDERSTANDING THAT THE BERLIN HOUSE OF REPRESENTATIVES WILL SELECT THE REPRESENTATIVES FOR THOSE SEATS WHICH FALL TO BERLIN WITHIN THE QUOTA FOR THE FEDERAL REPUBLIC OF GERMANY.

(2) EXTENSION OF THE DECISION AND ACT TO BERLIN IS  
SUBJECT TO ALLIED RIGHTS AND RESPONSIBILITIES AND  
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DOES NOT IMPLY THAT ALLIED LEGISLATION HAS BEEN REPEALED  
OR MODIFIED IN ANY WAY.

(3) THIS ORDER WILL BE TRANSMITTED...(CUSTOMARY  
CLOSING)

END TEXT

4. DUISBERG ASKED WHETHER, IF THE BK/O IS ISSUED IN  
THIS FORM, THE FRG DECLARATION MADE AT THE TIME OF  
SIGNING THE COUNCIL DECISION AND ACT ON SEPTEMBER  
20, 1976 CAN STAND. THE FRG DECLARATION READS:

BEGIN TEXT

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY  
DECLARES THAT THE ACT CONCERNING THE ELECTION OF  
THE MEMBERS OF THE ASSEMBLY BY DIRECT UNIVERSAL  
SUFFRAGE SHALL EQUALLY APPLY TO LAND BERLIN.

IN CONSIDERATION OF THE RIGHTS AND RESPONSIBILITIES  
OF FRANCE, THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND, AND THE UNITED STATES OF AMERICAN  
THE BERLIN HOUSE OF DEPUTIES WILL ELECT REPRESENTATIVES  
TO THOSE SEATS WITHIN THE QUOTA OF THE FEDERAL REPUBLIC  
OF GERMANY THAT FALL TO LAND BERLIN.

END TEXT

5. DUISBERG NOTED THAT IF THE REFERENCE TO ALLIED  
RIGHTS AND RESPONSIBILITIES SOMEHOW LIMITS THE RIGHTS  
OF THE FRG, INsofar AS THE ACT AND DECISION IS  
CONCERNED, BEYOND THE SPECIFIC LIMITATION ON THE MANNER  
OF ELECTING BERLIN REPRESENTATIVES, THEN THE FRG  
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MIGHT AT SOME POINT FIND ITSELF SUBJECT TO TWO CON-  
FLICTING OBLIGATIONS, ONE TO THE ALLIES AND ONE TO ITS  
TREATY PARTNERS IN THE EC. HE NOTED THAT THE FRG  
POSITION WITH RESPECT TO TREATIES APPLIED TO BERLIN  
IS THAT THEY ARE FULLY APPLICABLE EXCEPT TO THE DEGREE  
SPECIFICALLY LIMITED BY THE ALLIES. THE ALLIED REPS  
RESPONDED THAT THE FRG DECLARATION WAS UP TO THE FRG,

THAT THEY SAW NO FURTHER LIMITATIONS WITH RESPECT TO THE ACT AND DECISION AS IT NOW STAND SBUT THAT THE ALLIES HAD RESERVED THEIR POSITION WITH RESPECT TO FUTURE DEVELOPMENTS. DUISBERG SAID THAT THE FRG WOULD NOT CHANGE THE DECLARATION AND COULD ACCEPT THE ABOVE DRAFT WITH THE SUBSTITUTION OF "ELECT" FOR "SELECT".

6. DUISBERG AND HENZE SAID THE FRG WOULD PREFER TO USE THE WORD "ELECT" BOTH BECAUSE IT CORRESPONDS TO REALITY AND BECAUSE OF PRESENTATIONAL CONSIDERATIONS. THE REPRESENTATIVE OF THE BERLIN REPRESENTATION (MEICHSNER) ALSO ARGUED FOR "ELECT" ON THE GROUND THAT THE BERLIN REPRESENTATIVES MIGHT BE SUBJECT TO CHALLENGE ON THE GROUND THAT THEY WERE NOT PROPERLY PART OF A "DEMOCRATICALLY" ELECTED ASEMBLY. (COMMENT: WE SEE NO BASIS FOR THIS ARGUMENT.) HE SAID THAT IT WAS DOUBTFUL THE SOVIETS WOULD CHANGE THEIR VIEW OF THE SITUATION, REGARDLESS OF WHICH WORD WAS ONCLUDED IN THE BK/O. (COMMENT: WE AGREE, SEE REF F) FINALLY, HENZE SAID THAT "ELECT" IS THE WORD USED IN THE FRG DECLARATION (SUPRA). ALLIED REPS AGREED TO CONSIDER THE FRG PREFERENCE AND REFER THE MATTER TO CAPITALS.

7. WITH REGARD TO TIMING, HENZE SAID THAT THE FRG WOULD LIKE TO HAVE THE BK/O ISSUED AND THEN ADOPTED BY THE BERLIN HOUSE OF REPRESENTATIVES BEFORE THE SUMMER BREAK. THE LAST POSSIBLE DATE IS EXPECTED TO MAKE THIS POSSIBLE.

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O 071625Z JUL 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC IMMEDIATE 9642  
INFO AMEMBASSY BERLIN  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS  
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USMISSION NATO  
AMEMBASSY BRUSSELS

C O N F I D E N T I A L SECTION 3 OF 3 BONN 11288

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8. THE DEPARTMENT WILL RECALL THAT THE FRG PREFERENCE FOR THE USE OF "ELECT" AND THE FRENCH AND BRITISH REFERENCE FOR "SELECT" OR "CHOSEN" AS THE ENGLISH VERSION WAS THE SUBJECT OF BONN GROUP DISCUSSION LAST YEAR (REF C AND D) IN CONNECTION WITH THE FRG DECLARATION ( PARAGRAPH 4 SUPRA). AGREEMENT WAS FIRST REACHED IN MARCH ON THE GERMAN VERSION OF THE DECLARATION AND WAS APPROVED BY CAPITALS (REF E). THE GERMAN TEXT USED "WAEHLEN" BUT NO ENGLISH TRANSLATION OF THE TEXT WAS FORMALLY AGREED UPON OR REFERRED TO CAPITALS AT THE TIME, ALBEIT APPARENTLY NOT BECAUSE OF THE PROBLEM OF TRANSLATING "WAEHLEN". THE BONN GROUP NOTES OF JULY 16, 1976 REFLECT A LENGTHY DISCUSSION OF THE MATTER WHEN  
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THE FRG REP INFORMED THE BONN GROUP THAT THE CHANCELLOR'S OFFICE HAD PRODUCED ENGLISH AND FRENCH TRANSLATION FOR USE BY THE EC, IN WHICH "WAEHLEN" WAS TRANSLATED AS "ELECT" AND "ELIRE." BOTH THE FRENCH AND BRITISH WERE DISTURBED BY THIS FAIT ACCOMPLI. THE UK REP SAID THAT AGREED BONN GROUP TRANSLATIONS (WHICH USED "SELECT" AND "CHOISIR") WERE ALLEGEDLY A DIPLOMATIC COMPROMISE. BOTH THE UK AND FRENCH REPS SAID THEY WOULD HAVE TO REFER THE MATTER TO CAPITALS TO CHANGE THE TRANSLATION. WE HAVE NO RECORD OF THE TEXT HAVING BEEN REFERRED TO THE DEPARTMENT AND THE US REP SAID EITHER FORM WOULD PROBABLY BE ACCEPTABLE TO THE USG. THE MATTER WAS APPARENTLY DROPPED WITHOUT AGREEMENT AND THE EC USED THE FRG VERSION OF THE ENGLISH TEXT.

9. WITH RESPECT TO THE PRESENTLY PROPOSED BK/O, THE FRENCH ARE RECOMMENDING THAT THE BK/O SHOULD USE "SELECT" SINCE THAT REFLECTS LAST YEAR'S AGREEMENT

AND THE UK EMBASSY IS CONSIDERING THE MATTER. WE  
RECOMMEND THAT WE BE INSTRUCTED TO PUCH FOR "SELECT,"  
WITH AUTHORITY TO AGREE TO "ELECT" IF THE FRENCH AND  
BRITISH WISH TO DO SO. WHILE WE DO NOT CONSIDER  
THIS TO BE VITAL ISSUE, WE ADVANCE THE FOLLOWING  
ARGUMENTS IN SUPPORT OF OR POSITION IN FAVOR OF  
USING "SELECT."

(A) THE BONN GROUP APPARENTLY AGREED TO ITS  
USE LAST YEAR, BUT WAS FACED WITH AN FRG FAIT ACCOMPLI  
WHICH ENSURED THE USE OF "ELECT" BY THE EC.

(B) THE ALLIES, IN THEIR SEPTEMBER 20, 1976 REPLY TO THE  
AUGUST 3 SOVIET PROTEST, STATED THAT THE BERLIN DEPUTIES"  
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..WILL NOT BE DIRECTLY ELECTED BUT WILL BE SELECTED..."

(C) THIS USAGE IS MORE IN ACCORD WITH LANGUAGE USED IN THE  
MAY 12, 1949 LETTER FROM THE THREE WESTERN MILITARY  
GOVERNORS, WHICH INTER ALIA AUTHORIZED BERLIN TO "DESIGNATE  
" REPRESENTATIVES TO THE BUNDESTAG AND BUNDESRAT.

(D) INSISTING ON "SELECT" IS UNLIKELY TO BE SO IMPORTANT TO  
THE FRG AS TO CAUSE DELAY IN AGREEMENT ON THE BK/ON  
WHILE THE FRENCH MIGHT BE PREPARED, ON A POINT OF  
PRINCIPLE, TO REFUSE TO ACCEPT "ELECT".

10. ACTIONREQUESTED: APPROVAL OF DRAFT BK/O  
PARA 3 SUPRA WITH AUTOHITY TO AGREE TO USE OF "ELECT" AS FALLBACK  
POSITION.  
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## Message Attributes

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